IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5165 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Petitioner(s)
Versus
MAHENDRASINHJI DIGVIJAYSINHJI VAGHELA & 1 - Respondent(s)

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Appearance :
MR DIPEN DESAI, ASSTT. GOVERNMENT PLEADER for Petitioner(s) : 1,
None for Respondents

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 15/06/2007

ORAL JUDGMENT

1. Shri Dipen Desai, learned AGP for the petitioner; none for the respondents though served.

2. The State being aggrieved by the order dated 28th February, 1989 passed by the President, Gujarat Revenue Tribunal, setting aside the orders passed by the Deputy Collector on 28.4.88 and the Mamlatdar on 7.12.87, holding that the proceedings conducted by the Mamlatdar and Deputy Collector were nullity, is before this Court.

3. The short facts necessary for disposal of the present writ application are that the Mamlatdar cum ALT, vide his order dated 17.2.86 held that the original land holders were possessing 2 Acres and 2 Gunthas surplus land of survey no. 54. The order not being palatable to the land holders, they preferred an appeal, the order was confirmed to the extent of the surplus land. However, survey number was changed by the order of the Deputy Collector dated 23.9.86. Ordinarily in absence of an appeal or revision, that could have been end of the matter, but surprisingly, another Deputy Collector, contrary to the provisions of law, took up the order of the Mamlatdar dated 17.2.86 in suo motu

revision, issued notices to the land holders and after securing their attendance, vide his order dated 30th April, 1987 set aside the order of the Mamlatdar dated 17.2.86 [though it was already confirmed by another Deputy Collector on 23.9.86] and remanded the matter to the Mamlatdar for a decision afresh. After the remand, the Mamlatdar again heard the parties and held that the petitioners were in possession of 48 Acres and 15 Gunthas surplus land. The order was made on 7.12.87, the appeal against the said order was dismissed by the Deputy Collector on 28.4.88, therefore, the land holders filed Revision No. TEN BA No. 423/88, which was finally allowed by the Gujarat Revenue Tribunal on 28th February, 1989 holding inter alia, that the order of remand passed by the Collector on 30.4.87 was patently illegal, void ab initio and could not confer any jurisdiction on the Mamlatdar to reopen the matter. The State is now aggrieved by the said order.

4. Shri Dipen Desai, learned counsel for the petitioner State submits that in absence of

challenge to the order of the Deputy Collector dated 30.4.87 remanding the matter to the Mamlatdar, the order would bind the parties and even the Gujarat Revenue Tribunal would not be entitled to say in the later proceedings that such order was patently illegal or could not confer jurisdiction upon the Mamlatdar. He submits that the order dated 28th February, 1989 passed by the Gujarat Revenue Tribunal be quashed and set aside.

5. Section 37 of the Gujarat Agricultural Lands Ceiling Act provides that where no appeal has been filed within the period provided for it, the Collector may, suo motu or on a reference made in this behalf by the State Government, at any time, call for the records etc. and pass such orders thereon as he deems fit provided that no such record shall be called after expiry of one year from the date of such order and no order of such Mamlatdar or Tribunal shall be modified, annulled or reversed unless opportunity has been given to the interested parties to appear and be heard.

6. Suo motu powers of revision can be exercised by the Collector, if no appeal has been filed against the order impugned within a period of limitation provided for it. In the present matter, the order passed by the Mamlatdar was challenged in an appeal and the appeal was dismissed by the Deputy Collector on 23.9.86. Once an appeal was filed and was finally disposed of by the appellate authority, then, the Collector would not be entitled to exercise suo motu revisional powers with the aid and assistance of Section 37 of the Act. If any Collector or Deputy Collector exercises the powers contrary to Section 37, then, such would be an action in the teeth of the law. Section 37 clearly provides assumption of the jurisdiction in a case where no appeal has been filed and more than a year has not passed for calling the records. In the present matter, the Collector/Deputy Collector could not assume jurisdiction to exercise suo motu revisional powers. If such powers are exercised by the authority contrary to law, then, the order would

not only be void or voidable, but would be nonest in the eyes of law. If both the orders are allowed to stand, they would lead to an impossible situation. On one side, the State would be legally bound by the earlier order and as submitted, the respondent would be bound by the later order. The law does not comprehend such an absurd situation. If the order passed by the Mamlatdar had already been confirmed by some Deputy Collector, then, another Deputy Collector could not set aside the order confirmed by his predecessor. Such an exercise in revisional jurisdiction is not permissible. A revisional authority can revise the order passed by the subordinate court and not of the same court. It will have to be observed that such order would be no order. It would not only be a void order, but it would be an order which is not in existence in the eyes of law. If an order has no existence in the eyes of law, then, relying upon such order, any other authority cannot assume jurisdiction. After such illegal and void order of remand, the Mamlatdar could not assume

jurisdiction and redecide the whole matter.

7. Shri Dipen Desai, placing reliance upon the two judgments of the Supreme Court in the case of *State of Punjab v. Gurdev Singh, reported in AIR 1992 SC 111 and in the case of Pune Municipal Corporation v. State of Maharashtra, reported in JT 2007 [4] SC 87,* submitted that if an order is void, then, it is required to be challenged before the appropriate forum and if the order is not challenged, then, the order would bind the parties. In the opinion of this Court, such argument would not be available to the petitioner, because, the order dated 30.4.87 is not a void order, but is an order which is nonest in the eyes of law.

8. Present is not a case where some authority passed an illegal order but it is a case where in view of the earlier order, the revisional authority could not assume jurisdiction. The earlier order passed by the Deputy Collector even otherwise would operate as res judicata.

9. The Tribunal was certainly justified in holding that the Deputy Collector could not assume

jurisdiction to exercise suo motu revisional powers nor could remand the matter to the Mamlatdar. The Tribunal was also justified in quashing and setting aside all the proceedings after the remand was made. The present petition ought not to have been filed because it is not expected of the State that it would take advantage of a wrong committed by its own officer and play fraud with its citizen.

10. I find no reason to interfere. The petition deserves to and is accordingly dismissed with exemplary costs of Rs. 5,000/- [Rupees Five Thousand only]. Rule is discharged. Interim relief, if any, is vacated.

[R.S. GARG, J.]

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